

GEORGETTE B. LEE

IBLA 70-306

70-306A

70-307

70-308

Decided February 15, 1971

Conveyances: Reservations and Exceptions -- Oil and Gas Leases:

Acquired Lands Leases -- Oil and Gas Leases: Applications:

Generally -- Oil and Gas Leases: Lands Subject to

An acquired lands oil and gas lease offer filed July 1, 1966, is properly rejected as being prematurely filed, where oil and gas rights in the acquired lands were reserved in the grantor "for a primary period ending July 1, 1966," as that provision is interpreted as reserving those rights in the grantor until the last moment of July 1, 1966, with title vesting in the United States the first moment of July 2, 1966.

IBLA 70-306 : ES 1426 etc.
70-306A
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70-308

GEORGETTE B. LEE : Acquired lands oil and
gas lease offers rejected
: Affirmed

DECISION

Mrs. Georgette B. Lee has appealed to the Director, Bureau of Land Management, 1/ from decisions dated February 20, 1968, in which the Bureau's Eastern States land office had rejected her oil and gas lease offers ES 1426, 1431, 1432 and 1433, for certain acquired lands within the De Soto National Forest, Jones County, Mississippi, for the reason that the offers, filed July 1, 1966, were prematurely filed as title to the minerals in the acquired lands did not vest in the United States until July 2, 1966.

The subject lands had been conveyed to the United States by the Rodes Realty Corporation by a deed containing the same term reservation of minerals as that discussed in Ethel C. Radzewicz et al., A-30866 (January 29, 1968). 2/

1/ The Secretary of the Interior, in the exercise of his supervisory authority, transferred jurisdiction over all appeals pending before the Director, Bureau of Land Management, to the Board of Land Appeals, effective July 1, 1970. Circular 2273, 35 F.R. 10009, 10012.

2/ The lease offers involved in Radzewicz were: ES 1421, 1422 (Mrs. Ethel C. Radzewicz); ES 1424 (Finlay MacLennan); and ES 1427, 1428, 1429, 1430 (Mrs. Georgette B. Lee).

The appellant has presented no arguments not covered in the Radzewicz decision, but she adverted to litigation seeking review of that decision.

In the litigation, Georgette B. Lee (Hall) v. Udall, Civil 985-68, D.D.C, judgment for the defendant was rendered October 30, 1968, with a subsequent appeal sub nom. Lee v. Hickel, No. 23837 D.C.Cir. being dismissed November 17, 1970.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 D.M. 13.5; 35 F.R. 12081), the decisions appealed from are affirmed for the reasons set forth in Radzewicz, supra, a copy of which is appended hereto.

Francis E. Mayhue, Member

We concur:

Martin Ritvo, Member

Edward W. Stuebing, Member

ETHEL C. RADZEWICZ ET AL.

A-30866

Decided January 29, 1968

Conveyances: Reservations and Exceptions--Oil and Gas Leases:

Acquired Lands Leases--Oil and Gas Leases: Applications:

Generally--Oil and Gas Leases: Lands Subject to

An acquired lands oil and gas lease offer filed July 1, 1966, is properly rejected as being prematurely filed, where oil and gas rights in the acquired lands were reserved in the grantor "for a primary period ending July 1, 1966", as that provision is interpreted as reserving those rights in the grantor until the last moment of July 1, 1966, with title vesting in the United States the first moment of July 2, 1966.

	:	ES 1421 etc.
Ethel C. Radzewicz <u>et al.</u>	:	Acquired lands oil and
	:	gas lease offers rejected
	:	Affirmed

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

Ethel C. Radzewicz, Finlay MacLennan and Georgette B. Lee have appealed to the Secretary of the Interior from a decision by the Chief, Branch of Mineral Appeals, Office of Appeals and Hearings, Bureau of Land Management, dated June 26, 1967, affirming a decision of the Bureau's Eastern States land office dated October 18, 1966, which rejected their oil and gas lease offers for certain acquired lands in Mississippi 1/ for the reason that their offers filed on July 1, 1966, were prematurely filed as title to the minerals in the acquired lands did not vest in the United States until July 2, 1966.

The lands are part of the DeSoto National Forest, Wayne County, Mississippi.

The land office action was taken after protests against the offers filed on July 1, 1966, were made by holders of conflicting lease offers which were filed on July 5, 1966, including Anna Rae Lloyd (ES 1449) who has responded to Mrs. Radzewicz's appeal. 2/

The only issue which the parties have raised in this appeal concerns the time when title to the minerals in the acquired lands vested in the United States. There is no factual dispute in this matter but only a legal dispute as to the proper interpretation of the clauses reserving mineral rights in the grantor in deeds conveying the acquired lands to the United States. The reservation clauses

1/ The lease offers involved in the present appeals are: ES 1421, 1422 (Mrs. Radzewicz); ES 1424 (MacLennan); and ES 1427, 1428, 1429, 1430 (Mrs. Lee). Additional offers were involved in the land office decision, but appeals were not taken with respect to them, or the offers have been withdrawn.

2/ Another protester, Mrs. Jan Gore Mounger (ES 1450), was allowed to December 8, 1967, to file an answer to Mrs. Lee's statement of reasons, but an answer from her has not been received.

in the deeds of conveyance to the United States provided that the grantor reserved rights in the oil and gas "for a primary period ending July 1, 1966." There was also provision for an extended period, but the conditions for such an extension do not appear to have occurred.

Basically, the appellants interpret the reservation "for a primary period ending July 1, 1966" as vesting title in the United States at the earliest moment of July 1, 1966, with the grantor's interest thus ceasing at the last moment of June 30, 1966, whereas respondent contends, and the Bureau held, that the reservation in the grantor continued until the last moment of July 1, 1966, with title vesting in the United States the first moment of July 2, 1966.

All of the appellants contend that the intent of the grantor must be ascertained to determine the time the reservation of the mineral rights expired because they assert that the language used is ambiguous and thus external aids may be used to determine the intent. Appellants Radzewicz and MacLennan have submitted an affidavit by the Secretary of the Rodes Land Company, Inc., formerly Rodes Realty Corporation, which was the grantor of the land involved here, who indicates that minute books of the corporation include a report as to the terms of the sale of the land to the United States which states that the corporation retained "until July 1, 1966" the mineral rights. They state that the United States in preparing the deed did not utilize the word "until" to express the intent of the grantor but used instead the word "ending" without any word of qualification such as "on". They contend that the word "ending" does not have the clarifying effect that the phrase "ending on" would have and that the omission of the word "on" is significant.

All of the appellants suggest that in the normal business world connotation the time fixed for the ending and vesting of the estate in the minerals would coincide with a date familiar in all business and fiscal transactions for ending a business period --June 30. For this reason they suggest that the case is distinguishable from a Departmental decision relied on by the Bureau, Curtis E. Thompson, 74 I.D. 168 (1967), where the same issue was presented as to the time of the vesting of the United States' title in a deed reserving the mineral rights "for a primary period ending June 30, 1965". The Thompson decision held that the reservation ended the last moment of June 30th and title to the minerals vested in the United States the first moment of July 1st.

The appellants have cited cases which interpreted a time period of "until" the first day of a month as excluding that day, and contend that the word "until" has the same meaning as the word "ending" in that case. Thus, they contend that likewise it should be interpreted as excluding the day July 1 from the mineral reservation. They contend that Mississippi law is applicable and that in the case of Mississippi Benefit Assoc. v. Brooks, 185 So. 569 (1939), the Mississippi Supreme Court held that where an instrument does not fix any hour within a day for an instrument to be effective, the instrument takes effect at the earliest moment of that day.

The respondent contends that the provision as to the reservation of the mineral rights is unambiguous as the words should be given their common accepted meaning, and that, therefore, extrinsic aids should not be allowed or considered, and that rules of construction may not be used. Nevertheless, she contends that Mississippi statutory and case law shows a strong propensity to make the date ad quem inclusive. She has also discussed in great detail and with many authorities the contentions of appellants and disputes them.

We conclude that the decision of the Bureau and the position of respondent are correct as to the ultimate issue of when title vested in the United States. Even if we assume with the appellants that the phrase "ending July 1, 1966" is ambiguous and may be clarified by showing the intent of the grantor, we do not believe they have submitted a showing which establishes that the date ad quem was intended to be excluded rather than included in the period of the reservation of the mineral rights. The affidavit of the Secretary of the corporation-grantor certainly does not conclusively show this, as by appellants' own statements, whether words such as "until" include or exclude the date ad quem depend upon the intent of the parties, and his affidavit did not show any intent other than by the use of the phrase "until July 1, 1966." Appellants rely greatly on the fact that the date ad quem is the first day of a month and the beginning of a normal business period and thus conclude that it must be excluded. However, other than making this assumption and citing a few cases in different circumstances making such an assumption appellants offer no other support for their contention that this assumption was the basis of the grantor's understanding and intent in this case. Respondent has cited other cases where the date ad quem was considered as being included in the time period involved.

Contrary to appellants' contentions concerning the Department's decision in the Thompson case, the fact that the date ad quem was the last day of the month rather than the first day of the month, as it is here, was given no significance. Instead, the case emphasized the general rule that in determining the duration of a time period, fractions of a day are not generally regarded, and an interest or an

estate extends from the first instant of the first day specified through the last instant of the last day named. See 74 I.D. 270. Also, with respect to appellants' argument that because the case Mississippi Benefit Assoc. v. Brooks, supra, holds that an instrument takes effect at the earliest moment of a stated date where no hour is specified, then the reservation must have terminated the first moment of July 1, the Thompson case met a similar argument and rejected it, saying:

"The appellant's theory requires a strained interpretation of the law. In essence, he argues that because it has been held that a period which begins on a given day begins to run from the first moment of that day it must follow that a period which ends on a specified day terminates at the first instant of that day. * * * [Footnote omitted] The latter proposition, however, does not necessarily follow the former as a matter of logic, and from the decisions, and the discussions of the pertinent principles of law, we think that appellant's view does not represent the law generally, or more specifically, the law of Louisiana." 74 I.D. 169-170.

The appellants have cited no Mississippi cases which would show that the Mississippi rule as to the inclusion of the date ad quem does not follow this general rule, whereas respondent has cited many cases which illustrate that it does. In the case of S. J. Hooper, 61 I.D. 346 (1954), this Department interpreted a similar deed in Mississippi reserving the mineral rights for a period "ending July 1, 1952" as vesting title in the mineral rights on July 2, 1952, with the interest of the United States prior to July 2 being subject only to future interest leasing.

In short, we see no reason to distinguish this case or to reach a different conclusion from that reached in the Hooper and Thompson decisions interpreting similar provisions.

Accordingly, pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (210 DM 2.2A(4)(a); 24 F. R. 1348), the decision appealed from is affirmed.

Ernest F. Hom
Assistant Solicitor
Land Appeals

